IN THE SUPREME COURT OF MISSOURI

STATE EX REL DEPT. OF SOCIAL SERVICES,	)	
Relator,	)	
vs.	)	**Case No. SC93187**
HON. FREDERICK TUCKER,	)	
Respondent.	)	

Writ from the Circuit Court of Macon County, Missouri

RELATOR'S BRIEF

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JURISDICTIONAL STATEMENT

This is an original writ of prohibition directed to the Honorable Frederick Tucker, Circuit Judge of Macon County, Missouri. This writ was originally filed in the Missouri Court of Appeals, Western District but was denied. This court has superintending control over all circuit courts of the state, including Respondent. Thus, this court has the power to issue remedial writs such as prohibition and jurisdiction properly is in this court under Art. V. Sec. 4 of the Missouri Constitution.

POINTS RELIED ON

Relator is entitled to an order prohibiting Respondent from ordering the disclosure of the identity of "hotline callers" reporting possible child abuse or neglect because the identity of private informants of child abuse or neglect is protected and cannot be released according to Section 210.150, RSMo. Supp. 2012, in that none of the statutory exceptions to disclosure is present in this dissolution case.

§ 210.150, RSMo.

§ 210.145, RSMo.

State ex rel. McKeage v. Cordonnier,

357 S.W.3d 597 (Mo. banc 2012)

STANDARD OF REVIEW

The extraordinary writ of prohibition is available: "(1) to prevent a usurpation of judicial power when the circuit court lacks authority or jurisdiction; (2) to remedy an excess of authority, jurisdiction or abuse of discretion where the lower court lacks the power to act as intended; or (3) where a party may suffer irreparable harm if relief is not granted." *State ex rel. McKeage v. Cordonnier*, 357 S.W.3d 597, 599 (Mo. banc 2012) (citing *State ex rel. Houska v. Dickhaner*, 323 S.W.3d 29, 32 (Mo. banc 2010)). Whether to issue a writ is discretionary and a writ "does not issue as a matter of right." *State ex rel. Horn v. Ray*, 325 S.W.3d 500, 504 (Mo.App. E.D.2010).

"The standard of review for writs of mandamus and prohibition ... is abuse of discretion, and an abuse of discretion occurs where the circuit court fails to follow applicable statutes." *State ex rel. City of Jennings v. Riley*, 236 S.W.3d 630, 631 (Mo. banc 2007). An important consideration is whether irreparable harm will result if the writ is not granted. Irreparable harm makes prohibition available "when there is an important question of law decided erroneously that would otherwise escape review by this Court, and the aggrieved party may suffer considerable hardship and expense as a consequence of the erroneous decision."

STATEMENT OF FACTS

The underlying case in this matter is In re the Marriage of Lindsey Ogle v. David Ogle, a dissolution of marriage action involving child custody issues. The action has been pending in the Circuit Court of Macon County for over 2 years. On February 5, 2012 Relator received a motion from David Ogle asking Respondent to order Relator to release all records concerning the parties' children, including the identity of all persons placing hotline child neglect or abuse calls. (Exhibit B) The motion alleged there had been at least 8 unsubstantiated hotline calls against the father David Ogle, which he believed had been instigated by the mother. The motion further alleged that the identity of the hotline callers was necessary to determine the nature and extent of Mother's involvement in the calls. (Exhibit B)

Relator Department of Social Services opposed the motion citing its duty under Sec. 210.150 to protect the confidentiality of hotline caller's identity. (Exhibit C) Respondent Judge entered a Qualified Protective Order on February 13, 2013. (Exhibit A) The Respondent found that "considering the nature of the proceeding … there is a legitimate interest in the disclosure of the protected information." (Exhibit A). Department of Social Services then sought a writ of prohibition in the Missouri Court of Appeals Western District, which was denied. (Exhibit D)

ARGUMENT

Prohibition is particularly appropriate in this case for two reasons. First, the Respondent has acted directly contrary to statute and has thus abused his discretion and exceeded his jurisdiction. Secondly, compliance with the court's order will cause irreparable harm both to the hotline reporters in this case and to the system of anonymity designed by the legislature to encourage reporting of child abuse or neglect. Quite simply, after a reporter has been identified the bell cannot be un-rung.

Some reporting system for abuse or neglect of children has been in place for many years. There are two types of reporters: (1) mandatory reporters in certain occupations designated by Section 210.115(1), RSMo. Supp. 2003 and (2) voluntary reporters described in Section 210.115(4). *Id.* It is the express public policy of Missouri to encourage callers to the abuse and neglect hotline as several statutory sections indicate. Section 210.135(1)(2), RSMo. Supp. 2012 provides immunity for reporters unless they act in bad faith, for ill motive or intentionally file a false report. Section 210.140, RSMo. Supp. 2001 provides certain exceptions to generally recognized privileges that would otherwise bar reporting. Finally, unapproved disclosure of reporters identifying information is a crime. Section 210.150(4)

Two subsections of Section 210.150 deal with the disclosure of a hotline caller's identity. Subsection 2 (4) (5) (7) (8) (9) (10) deal with substantiated hot line complaints. Subsection 3 deals with hotline reports found to lack sufficient

evidence after investigation. The sections dealing with substantiated and unsubstantiated reports each have their own separate exceptions to non-disclosure and confidentiality. *All of the hotline reports in this case were found unsupported by sufficient evidence.* Subsection 3, therefore, applies in this proceeding and only its exceptions should be considered. Specifically germane here is that both the parent (Mother) and the alleged perpetrator (Father) are denied identifying information concerning the reporter. Section 210.150.3 (2) and (3).

Relator does not believe that any factual circumstances in this case would change the application of the legal principle that reporter identity is protected. However, there are a number of undisputed facts that may apply to Respondent's position that disclosure is legally permissible.

First, there is no dispute that each of the hotline reports was found after investigation by Relator to be unsubstantiated. Second, both parties to the action below have received copies of the investigation reports generated by those hotline reports. Those reports redacted the reporter's identifying information, social security numbers and other privileged and protected information. Third, Relator by this writ seeks only to prevent the release of the reporter information. Fourth, the party who requested the reporter information be ordered disclosed is the alleged perpetrator who is specifically denied the information under Section 210.150.2(5). (Exhibit B Relator's Petition for Writ).

And, finally, the movant father below has not defended the Respondent and has not opposed a writ of prohibition. Although mother in her return to the request for writ makes a broad claim "that there are numerous and various allegations of abuse, including sexual abuse," in the underlying proceeding she does not attach a single exhibit or portion of the record supporting that claim. And if she did so, it would have no legal significance.

None of the statutory exceptions to non-disclosure of reporters' identity applies in this case. The only exception urged by Relator is subsection (6) of Section 210.150.2 inter alia, "A . . . juvenile court or other court conducting abuse or neglect or child protective proceedings or child custody proceedings . . ." Relator posits that because subsection (6) has no specific provision prohibiting release of the hotline reporter's identity that the omission is an implied permission for release. But Relator *totally ignores that subsection (6) does not apply to unsubstantiated reports.* Even if authorization was intended for release to "a court", Respondent did not order release of the information to itself but rather to the parties. The court did not even request that it be provided a copy. Moreover, there has been no showing that the *court* needs the information to carry out its responsibilities under law to protect children.

This writ presents a simple question. Do persons who make hotline reports of child abuse under RSMo. 210.145 have the right to confidentiality that they are provided and promised by statute or do the parties to a divorce proceeding have a

right to learn their identities and use that for whatever purpose? This writ **is not** about whether the parties get copies of the investigation reports. Both parties already have those with, however, the names of the hotline callers redacted. Given the father's allegation that mother instigated the calls, it is totally unclear why she would seek un-redacted reports since she theoretically would already know their identity.

Release of a hotline caller's identity will have a dangerous chilling effect on potential reporters. The trial court's ruling is not limited to mandatory reporters but also includes the worried neighbor. Even mandatory reporters may be affected by deciding just not to ask questions rather than risk public disclosure and possible reprisal.

Missouri law requires that a hotline caller be told that "the reporter's name and any other personally identifiable information shall be held as confidential and shall not be made public…." Section 210.109.3(3). If Respondent's order is upheld that may be an empty promise. No logical authority supports the Respondent's order nor is there any apparent legitimate reason or sufficient reason for breaching that confidentiality. Both parents already have the complete investigation files that resulted from the calls. Disclosure of the reporter's identities can only be for the purpose of harassing the reporter or one parent attacking the other here on some theory that the parent believes the other improperly encouraged a report. Moreover, if that is the goal, the parents are free to pursue this through discovery

between themselves, if a parent encouraged a report by someone, which is not protected information.

The risk of chilling the willingness of people to report child abuse is too great to justify release of reporter's names, without any specific legal authority, in a case such as this dissolution case. Further supporting Relator's position is that even if the name was disclosed the *fact* of a report is not admissible in evidence. Section 210.145(18).

Maintaining a secure and anonymous system for the reporting of child abuse is a fundamental mission of Relator, mandated by the legislature, and of critical importance to the safety of Missouri children. For these reasons, Relator prays this court for its order prohibiting Respondent from ordering release of the names of child abuse reporters.

RELIEF SOUGHT

Relator seeks an order prohibiting the circuit court from ordering the release of the identity of the hotline caller under Section 210.150, RSMo.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 84.06

The undersigned hereby certifies that this brief complies with the limitations set forth in Rule 84.06(b) and contains 1,859 words as calculated pursuant to the requirements of Rule 84.06(b)(2).

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed electronically via Missouri CaseNet, and served, on May 21, 2013, to:

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